

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER:	PAMELA D. HESS	}	
	(SURFACE OWNER)	}	
		}	
	v.	}	VIRGINIA GAS
		}	AND OIL BOARD
		}	
		}	
RESPONDENT:	CNX GAS COMPANY, LLC	}	
	(Permit Applicant)	}	
		}	
		}	
RELIEF SOUGHT:	APPEAL OF DECISION BY THE DIRECTOR	}	DOCKET NO.
	OF THE DIVISION OF GAS AND OIL	}	VGOB-14-
	DATED May 2, 2014, FOLLOWING	}	0617-4049
	INFORMAL FACT FINDING CONFERENCE	}	
	220	}	

REPORT OF THE BOARD

FINDINGS AND ORDER

1. Hearing Date and Place: This matter came on for final hearing before the Virginia Gas and Oil Board (hereafter "Board") at 9:00 a.m. on June 17, 2014 at the Russell County Conference Center, Lebanon, Virginia.

2. Appearances: Gerald Gray (Counsel for Petitioner) Pamela D. Hess and Leonard Hess, (surface owners); Mark Swartz, Esq. appeared for the Respondent, CNX Gas Company, LLC; and Matt Gooch, Esq., Assistant Attorney General, was present to advise the Board.

3. Jurisdiction and Notice: Pursuant to Va. Code §§ 45.1-361.1 et seq., the Board finds that it has jurisdiction over the subject matter. The Board also finds that the notices given herein satisfy all statutory requirements, Board rule requirements and the minimum standards of due process. After hearing arguments and considering the Directors decision and evidence presented, upon motion and vote, the Board denied Petitioner's application on appeal, relying on Va. Code §§ 45.1-361.1, 45.1-361.29, 45.1-361.35 and 45.1-361.36.

4. Relief Requested: Petitioner, Pamela Hess (surface owner), appealed the Director's decision in IFFH 220 requesting:

- I. Pamela Hess objected to CNX Gas Company, LLC and any contractors working for CNX Gas Company, LLC to come on the property because the location of the well would be an unreasonable infringement on the surface owner's use of the property as real property owned by Pamela D. Hess.

5. The only statutory objections to permit applications available to surface owners are set out at § 45.1-361.35. (B) Objections to permits; hearing.

1. The operations plan for soil erosion and sediment control is not adequate or not effective;
2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;
4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

6. Relief: The Petitioner's requested relief in this cause is hereby denied:

- a. The Board found that the Petitioners had failed to present sufficient evidence to prove their case.
- b. The Board found that the Petitioner had been appropriately provided notice and the opportunity to appear and appeal to the permit application for this permit application 19060.
- c. The Board found that the Respondent was a surface owner only. Petitioner did not present any evidence to refute the opinion.

7. Conclusion: The decision of the Director of the Division of Gas and Oil dated May 2, 2014 in IFFH 220, and attached hereto is hereby affirmed, and the appeal of Pamela Hess is denied. The Director of the Division of Gas and Oil is directed to issue the well permit for Application #19060 Coalbed Methane Gas Well with Pipeline and IT IS SO ORDERED.

8. Appeals: Appeals of this Order may be filed by an adversely affected parties within thirty days after service of the Order, pursuant to the provisions of Va. Code Ann. § 45.1-361.9 that provides that any order or decision of the Board may be appealed to the appropriate circuit court where interlocutory relief may also be sought. Any appeal shall be filed in compliance with the provisions of the Administrative Process Act (Va. Code Ann. §§ 2.2-4000 et seq.) and the Rules of the Supreme Court of Virginia.

9. Effective Date: This Order shall be effective as of the date of the Board's decision on June 17, 2014.

Decision of the Director

In the matter before IFFH 220 under § 45.1-361.35 B (2) Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water bearing strata.

The applicant provided testimony that a minimum of four hundred and nine feet of seven inch casing cemented to the surface along with two thousand and seventy three feet of four and one-half inch casing cemented to surface would be installed in the well to prevent water damage.

The objecting parties testified that their spring water was in good condition and they were concerned that the well and facilities would damage the quality and quantity of water.

In the matter before IFFH 220 under § 45.1-361.35 B (4): Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

The applicant testified that the well Z-36D was more than 750 feet from the objecting parties. The applicant testified that only a portion of the road and pipeline crossed the western portion of the objecting party's property. According to the Permit Application 19060, the well is at a minimum 750 feet from the closet objecting party.

The objecting party testified that she thought the well road and pipeline should come from Shack Branch.

Based on the applicant's testimony and the history of drilling coalbed methane wells in Virginia the water protection string is adequate to protect water zones.

Based on testimony and presented in the applicant's application. The applicant is limiting surface disturbance by utilizing the western most portion of the objecting party's property.

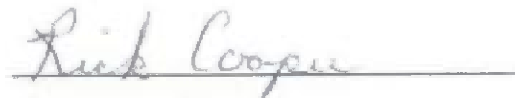
Permit Applicant apparently has rights to use Surface Owner's property to access their mineral estate. If this is in dispute, it must be contested in a court of proper jurisdiction. While it can be argued that any adverse use of property is an infringement, § 45.1-361.35 only allows consideration of unreasonable infringement.

Based on testimony, it is, therefore, the decision of the Director to deny Surface Owner's objections to permit Application 19060 for operations CBM Z-36D with pipeline. The Permit Application 19060 for operations Z-36D with pipeline will be assessed and issued under standard Division of Gas and Oil permit procedures.

Right of Appeal

Any party aggrieved by this decision of the Director may appeal the decision to the Virginia Gas and Oil Board by filing a petition with the Board within ten (10) days following the decision (§45.1-361.36). No petition or appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact finding conference.

Signed this 2nd of May, 2014

A handwritten signature in cursive script, reading "Rick Cooper", is written over a horizontal line.

Rick Cooper, Director
Virginia Division of Gas and Oil

DONE AND EXECUTED this 7 day of August, 2014 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

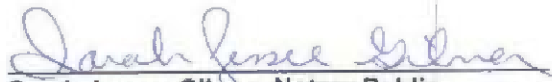
DONE AND PERFORMED this 7 day of August, 2014 by Order of the Virginia Gas and Oil Board.



Rick Cooper
Principal Executive to the
staff, Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA
COUNTY OF RUSSELL

Acknowledged on this 7th day of August, 2014, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the staff of the Virginia Gas and Oil Board, that they executed the same and was authorized to do so.

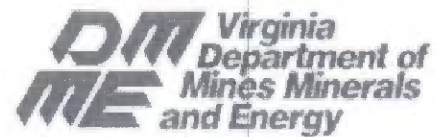


Sarah Jessee Gilmer, Notary Public
242946

My Commission expires: July 31, 2017



Virginia Division of Gas and Oil
P. O. Box 159
135 Highland Drive
Lebanon, VA 24266
Telephone: (276) 415-9700
Fax: (276) 415-9671



Rick Cooper, Director
Division of Gas and Oil

By Decision of the Director in

Informal Fact Finding Hearing 220 (Herein "IFFH 220")

**Pamela Hess
(Herein "Surface Owner")**

Vs.

**CNX Gas Company, LLC
(Herein "Permit Applicant")**

**Permit Application for Gas and Oil operations:
Coalbed Methane Operations Z-36D W/Pipeline, Application 19060
(Herein "Application")**

Background

Coalbed Methane operations Z-36D W/Pipeline, Application 19060, CNX Gas Company, LLC, was received at the Virginia Division of Gas and Oil (DGO) on October 05, 2011.

The evidence regarding the application and objections filed support the fact that the objections were timely and appropriate under Virginia Statute.

The objections filed by Pamela Hess against the permit application #19060 were in accordance with objections provided by law under § 45.1-361.35.

§ 45.1-361.35. Objections to permits; hearing.

B. The only objections to permits or permit modifications that may be raised by **surface owners** are:

2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water bearing strata.
4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

The Surface Owner's' objections were deemed acceptable under § 45.1-361.35

Hearing Date and Place

IFFH 220 was convened on Friday February 21, 2014, 1:00 PM in the Russell County Government Center, Highland Drive, Lebanon Virginia. All parties with standing to object to Permit Application #15640 were notified of the time and place by United States Postal Service, certified mail, return receipt requested.

Appearances:

For the Objecting Party: Mr. Gerald Gray, Counsel, Pamela Hess and Leonard E. Hess, representing the applicant.

For CNX Gas Company LLC: Mr. Mark Swartz, Counsel, Mary Beth McGlothlin, Beverly Webb and Ed Fanning, representing the applicant.

Findings of Fact:

1. In accordance with § 45.1-361.35.H, notice of IFFH 220 was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.
2. Pamela Hess was notified as a surface owner of properties to be affected by the proposed operations Application # 19060, Coalbed Methane Z-36D with pipeline, as such, have standing to object to the proposed operations.
3. IFFH 220 was convened at the time and place indicated in the notice.

Controlling Law and Regulation

1. Section 45.1-361.30.A (1) of the Virginia Gas and Oil Act requires that permit applicants notify all surface owners, coal owners, and mineral owners on tracts to be drilled.
2. Section 45.1-361.30.A (3) of the Virginia Gas and Oil Act requires that permit applicants notify all surface owners on tracts where the surface will be disturbed.
3. Section 45.1-361.30(D) of the Virginia Gas and Oil Act gives standing to object to permit applications to all parties receiving required notice.
4. Section 45.1-365.35(B) of the Virginia Gas and Oil Act details objections that may be filed by surface owners.
5. Section 45.1-361.35(H) of the Virginia Gas and Oil Act requires the Director to schedule an informal fact finding hearing concerning objections, and provide notice of the hearing to all parties with standing to object to the permit.
6. Section 45.1-361.35(I) of the Virginia Gas and Oil Act requires the Director to issue a decision regarding the objection if the parties to the hearing fail to reach an agreement.

Informal Fact Finding hearings are proceedings conducted under guidelines of the Administrative Process Act, the hearing can recess at any time if the involved parties mutually agree that they would like to negotiate off the record. This opportunity was not offered due to the fact that no objecting party's were present.

I. TESTIMONY BY THE APPLICANT

- *Mr. Mark Swartz presented in testimony that the well Z-36D was not on the Pamela Hess property.
- *Mr. Swartz stated that the well Z-36D was more than 750 feet from the Hess property.
- *The applicant stated that a portion of the road and pipeline was on the objecting party's property.
- *Mr. Swartz stated and provided exhibits showing that the road and pipeline was located on the most western portion of the Hess property to lessen surface disturbance.
- *The applicant provided documents and presented testimony that a minimum of 490' of 7 inch casing and a minimum of 2,073 feet of 4 ½-inch steel casing would be set in the well and that both casings would be cemented to surface to prevent any water damage.
- *Mr. Swartz provided exhibits and testimony that the surface was extremely steep from wells located north of the Z-36D wellsite (Shack Branch).
- *Mr. Swartz presented in testimony that the wells were strategically place to degas the Buchanan #1 mine for mine safety.

II. TESTIMONY BY THE SURFACE OWNER

- *Pamela Hess provided testimony that no CNX personnel had contacted her about the application.
 - *Mrs. Hess stated that over the years CNX contractors were on her property but did not talk to her or
 - *Mr. Hess and stated at a minimum they should contact them.
 - *Mrs. Hess and Mr. Hess provided testimony that CNX should come to the wells from Shack Branch to get to this well.
-

Decision of the Director

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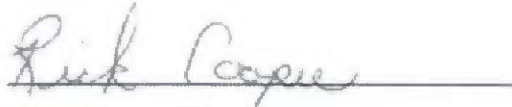
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Signed this 2nd of May, 2014

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Rick Cooper, Director
Virginia Division of Gas and Oil